TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 106.

H. HECKEL'S SUGAR REFINING COMPANY, PLAINTIFF IN ERROR,

vs.

PENROSE A. McCLAIN, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF PENNSYLVANIA.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED JULY 30, 1903.

(18,631.)

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SUPREME COURT OF THE UNITED STATES.

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SPRECKELS SUGAR REFINING COMPANY, PLAINTIFF IN ERROR,

vs.

PENROSE A. McCLAIN, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF PENNSYLVANIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 19, 1903.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or of some of you, between Spreckels Sugar Refining Company, plaintiff, and Penrose A. McClain, defendant, a manifest error hath happened, to the great damage of the said Spreckels Sugar Refining Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals, for the third circuit together with this writ, so that you have the same at the city of Philadelphia within thirty days, in the said United States circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, at Philadelphia, the 5th day of June, in the year of our Lord one thousand nine hundred and one.

[SEAL.] SAMUEL BELL,
Clerk of the Circuit Court of the United States.

Allowed by the court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Penrose A. McClain, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia within thirty days, pursuant to a writ of error, filed in the clerk's office of the circuit court of
2 the United States, eastern district of Pennsylvania, wherein Spreckels Sugar Refining Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John B. McPherson, judge, holding circuit court of the United States this 5th day of June, in the year of our Lord one thousand nine hundred and one.

JOHN B. McPHERSON, *J.*

Service accepted.

J. WHITAKER THOMPSON,
Ass't U. S. Att'y, for Defendant.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

THE SPRECKELS SUGAR REFINING CO. *against* PENROSE A. MCCLAIN. } October Sessions, 1900. No. 3.

Statement of Plaintiff's Demand.

The plaintiff claims of the defendant the sum of $134,560.72, together with interest thereon as hereinafter set forth, all of which is justly due from the defendant to the plaintiff as follows:

The plaintiff is and was at all times hereinafter averred a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, engaged in the business of manufacturing sugar; and the defendant was at the various times hereinafter mentioned the collector of internal revenue for the first district of Pennsylvania. On or about the several dates hereinafter mentioned, the defendant by virtue of his office as collector of internal revenue and assuming to act under the authority of the laws and statutes of the United States and more especially under the authority of a statute of the United States entitled "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898, did demand of and by force and duress did collect from the plaintiff the several sums of money hereinafter specified for the respective periods hereinafter mentioned.

3 On October 11, 1898, for the period from June 14 to June 30, 1898	$1,378 60
On October 11, 1898, for the month of July, 1898	6,025 24
On October 11, 1898, for the month of August, 1898	6,439 71
On October 31, 1898, for the month of Sept. 1898	10,566 94
On December 6, 1898, for the month of October, 1898	6,338 84
On January 23, 1899, for the month of Nov., 1898	5,580 83
On January 23, 1899, for the month of Dec., 1898	5,210 49
On April 3, 1899, for the month of January, 1899	5,590 85
On May 2, 1899, for the month of February, 1899	4,540 06
On June 6, 1899, for the month of March, 1899	6,826 23
On July 1, 1899, for the month of April, 1899	6,718 88
On August 3, 1899, for the months of May and June, 1899	17,789 08
On September 2, 1899, for the month of July 1899	8,186 57
On October 5, 1899, for the month of August, 1899	7,251 97
On November 8, 1899, for the month of Sept., 1899	7,914 32
On December 2, 1899, for the month of October, 1899	6,420 83
On January 12, 1900, for the month of Nov., 1899	4,341 73
On February 9, 1900, for the month of Dec., 1899	5,814 08
On March 13, 1900, for the month of January, 1900	5,422 73
On April 23, 1900, for the month of February, 1900	6,202 74
Amounting in all to the sum of	$134,560 72

On or about the said several dates above mentioned, the plaintiff involuntarily, and under threat of distraint against its property in case of its refusal so to do, was compelled to and did pay to the defendant by reason of the said illegal demand and duress the said several sums of money above mentioned, protesting that it was not liable to pay the said tax at the several times or at any time, and that the said tax was erroneously, illegally and wrongfully assessed and collected.

The gross amount of the receipts of the plaintiff in its business on which the said tax was assessed and collected, as was shown by the monthly returns duly made to the collector of internal revenue, included receipts for the said period from June 14, 1898, to September 30, 1899, from other sources than that of its business of refining sugar, viz:

Receipts upon account of indebtedness due the plaintiff prior to the passage of the act	$204,912 51
Do. interest upon loans or indebtedness	28,924 35
Do. rent or wharfage	18,386 29
Do. stevedoring	143,146 45

4 The plaintiff is informed and believes that no part of its said receipts from other sources than its business of refining sugar was taxable under the provisions of the said act; that no tax upon any of its receipts was payable or collectible before the end of the year from the date of the passage of the said act; that the administration of the act makes arbitrary, unjust and illegal discrimination, founded on a pretended difference between the business of manufacturing and of refining sugar, between the plaintiff and other persons, firms, corporations and companies carrying on and doing the business of refining sugar; and that all the provisions of the act subjecting the plaintiff to pay the tax in question are in violation of the Constitution of the United States and void.

On or about the 10th day of February, 1899, the 16th day of November, 1899, and the 24th day of April, 1900, the plaintiff duly appealed in writing according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof to the Commissioner of Internal Revenue to remit, refund and pay back to the plaintiff the said several amounts of money erroneously and illegally collected as taxes as aforesaid, alleging the following reasons why the said appeals should be allowed and why the said sums of money should be refunded:

First. That the said law in so far as it assumes to subject corporations or companies carrying on or doing business of refining sugar to pay a special excise tax is unconstitutional and void.

Second. That the said tax is a direct tax, which has not been apportioned among the several States as required by the Constitution of the United States, and is not uniform throughout the United States, and is invalid.

Third. That the plaintiff is and at all times has been engaged in the business of manufacturing sugar and not engaged in the busi-

ness of refining sugar; that it refines sugar only incidentally in the process of the manufacture thereof, and is, therefore, not liable for the payment of said tax.

Fourth. That by the provisions of the said law the said tax is payable annually at the end of each year and that the collection thereof monthly or for periods less than a year and prior to the expiration of the year is illegal, unauthorized and void.

Fifth. That the said tax has been assessed upon and collected from the gross receipts of the plaintiff, and that said gross receipts include receipts outside of those which come from the business of refining sugar; that the said gross receipts include receipts from sales of sugar made prior to the passage of the act, from interest on loans and indebtedness, from dividends upon stock owned by the plaintiff in other sugar refining companies, from wharfage collected by it upon wharves owned by it and receipts from other sources.

Sixth. Thereafter and on or about the 12th day of December, 1899, the said appeal for the refund or payment of the said sums of money was decided and disallowed by the said Commissioner and neither the said amount of money so collected as aforesaid nor any part thereof has been refunded to the plaintiff, but the whole thereof has been held and received by the defendant without right and to the use of the plaintiff; and the defendant has refused and still refuses to repay the same to the plaintiff.

The plaintiff further alleges that each and every one of the reasons mentioned in its appeal to the Commissioner of Internal Revenue and above set forth is a valid and lawful reason why the said several sums of money collected of the plaintiff as aforesaid should be refunded and repaid to the plaintiff.

Wherefore the plaintiff demands judgment against the defendant for the sum of one hundred and thirty-four thousand five hundred and sixty and 72/100 dollars ($134,560.72) with interest on $1,378.60 thereof from October 13, 1898, on $6,025.24 thereof from October 11, 1898, on $6,439.71 thereof from October 11, 1898, on $10,566.94 thereof from October 31, 1898, on $6,338.84 thereof from December 6, 1898, on $5,580.83 thereof from January 23, 1899, on $5,210.49 thereof from January 23, 1899, on $5,590.85 thereof from April 3, 1899, on $4,540.06 thereof from May 2, 1899, on $6,826.23 thereof from June 6, 1899, on $6,718.88 thereof from July 1, 1899, on $17,789.08 thereof from August 3, 1899, on $8,186.57 thereof from September 2, 1899, on $7,251.97 thereof from October 5, 1899, on $7,914.32 thereof from November 8, 1899, on $6,420.83 thereof from December 2, 1899, on $4,341.73 thereof from January 12, 1900, on $5,814.08 thereof from February 9, 1900, on $5,422.73 thereof from March 13, 1900, and on $6,202.74 thereof from April 23, 1900, together with the costs and expenses of this action.

JOHN G. JOHNSON,
Attorney for Plaintiff,
Per J. W. BAYARD.

PHILADELPHIA COUNTY, *ss:*

Joseph A. Ball being duly sworn says that he is the assistant treasurer of the corporation plaintiff and that the facts set forth in the foregoing statement as the basis of plaintiff's claim are true.

JOSEPH A. BALL.

6 Sworn to and subscribed before me this 20th day of September, 1900.

THOMAS S. GATES,
[SEAL.] *Notary Public.*

Endorsed: No. 3 October sessions, 1900, U. S. C. C. The Spreckels Segar Refining Co. *vs.* Penrose A. McClain. Statement of plaintiff's demand. Enter rule on above defendant to plead within fifteen days, or judgment *sec. reg.* John G. Johnson, att'y for plaintiff, per J. W. Bayard. To clerk U. S. C. C. John G. Johnson. Filed Sept. 21, 1900, Samuel Bell, clerk.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

THE SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN. } October Sessions, 1900, No. 3.

SIR: The above named defendant pleads "not guilty."

JAMES B. HOLLAND,
United States Attorney.

To Samuel Bell, Esq., clerk, U. S. C. C. E. D. of Pa.

Endorsed: No. 3, Oct. S., 1900, United States circuit court. Spreckels Sugar Refining Co. *vs.* Penrose A. McClain. Plea. James B. Holland, U. S. att'y. Filed Oct. 3, 1900, Samuel Bell, clerk.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

THE SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN. } October Sessions, 1900, No. 46.

7 *Statement of Plaintiff's Demand.*

Plaintiff claims of the defendant the sum of $32,049.60, together with interest thereon, as hereinafter set forth; all of which is justly due from the defendant to the plaintiff as follows:

The plaintiff is and was at all times hereinafter averred a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, engaged in the business of manufacturing sugar; and the defendant was at the various times hereinafter men-

tioned the collector of internal revenue for the first district of Pennsylvania. On or about the several dates hereinafter mentioned the defendant by virtue of his office as collector of internal revenue and assuming to act under the authority of the laws of a statute of the United States entitled "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898, did demand of and by force and duress did collect from the plaintiff the several sums of money hereinafter specified for the respective periods hereinafter mentioned:

On May 28, 1900, for the month of March, 1900.....	$5,415 41
On June 22, 1900, for the month of April, 1900.....	5,225 76
On August 4, 1900, for the month of May, 1900.....	5,566 51
On September 12, 1900, for the month of June, 1900.....	8,711 49
On September 12, 1900, for the month of July, 1900.....	7,130 43
Amounting in all to the sum of.....	$32,049 60

On or about the said several dates above mentioned, the plaintiff voluntarily, and under the threat of distraint against its property in case of its refusal so to do, was compelled to and did pay to the defendant by reason of the said illegal demand and duress the said several sums of money above mentioned, protesting that it was not liable to pay the said tax at the said several times or at any time, and that the said tax was erroneously, illegally and wrongfully assessed and collected.

The gross amount of the receipts of the plaintiff in its business on which the said tax was assessed and collected, as was shown by the monthly returns duly made to the collector of internal revenue, included receipts for the said period from March 1, 1900, to July 31, 1900, from other sources than that of its business of refining sugar, viz:

Receipts upon account of indebtedness due the plaintiff prior to the passage of the act.....	$517 92
8 Receipts upon account of interest upon loans or indebtedness	5,751 25
Receipts upon account of rent or wharfage.....	2,718 45
Receipts upon account of stevedoring.....	25,874 31

The plaintiff is informed and believes that no part of its said receipts from other sources than its business of refining sugar was taxable under the provisions of the said act; that no tax upon any of its receipts was payable or collectible before the end of the year from the date of the passage of the said act; that the administration of the act makes arbitrary, unjust and illegal discriminations, founded on a pretended difference between the business of manufacturing and of refining sugar, between the plaintiff and other persons, firms and corporations and companies carrying on and doing the business of refining sugar; and that all the provisions of the act subjecting the plaintiff to pay the tax in question are in violation of the Constitution of the United States and void.

On or about the 24th day of September, 1900, the plaintiff duly appealed in writing according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof to the Commissioner of Internal Revenue to remit, refund and pay back to the plaintiff the said several amounts of money erroneously and illegally collected as taxes as aforesaid, alleging the following as reasons why the said appeals should be allowed and why the said sums of money should be refunded:

First. That the said law in so far as it assumes to subject corporations or companies carrying on or doing the business of refining sugar to pay a special tax is unconstitutional and void.

Second. That the said tax is a direct tax, which has not been apportioned among the several States as required by the Constitution of the United States, and is not uniform throughout the United States, and is invalid.

Third. That the plaintiff is and at all times has been engaged in the business of manufacturing sugar and not engaged in the business of refining sugar; that it refines sugar only incidentally in the process of the manufacture thereof, and is, therefore, not liable for the payment of said tax.

Fourth. That by the provisions of the said law the said tax is payable annually at the end of each year and that the collection thereof monthly or for periods less than a year and prior to the expiration of the year is illegal, unauthorized and void.

Fifth. That the said tax has been assessed upon and collected from the gross receipts of the plaintiff, and that said gross receipts include receipts outside of those which come from the business of re-
9 fining sugar; that the said gross receipts include receipts from sales of sugar made prior to the passage of the act, from interest on loans and indebtedness, from dividends upon stock owned by the plaintiff in other sugar refining companies, from wharfage collected by it upon wharves owned by it and receipts from other sources.

Sixth. Thereafter and on or about the 12th day of December, 1900, the said appeal for the refund or payment of the said sums of money was decided and disallowed by the said Commissioner and neither the said amount of money so collected as aforesaid nor any part thereof has been refunded to the plaintiff, but the whole thereof has been held and received by the defendant without right and to the use of the plaintiff; and the defendant has refused and still refuses to repay the same to the plaintiff.

The plaintiff further alleges that each and every one of the reasons mentioned in its said appeal to the Commissioner of Internal Revenue and above set forth is a valid and lawful reason why the said several sums of money collected of the plaintiff as aforesaid should be refunded and repaid to the plaintiff.

Wherefore the plaintiff demands judgment against the defendant for the sum of thirty-two thousand and forty-nine dollars and sixty cents ($32,049.60) with interest upon $5,415.41 thereof from May 28,

1900; on $5,225.76 thereof from June 22, 1900; on $5,566.51 from August 4, 1900; and on $15,841.92 from the 12th day of September, 1900, together with the costs and expenses of this action.

JOHN G. JOHNSON,
Attorney for Plaintiff,
Per J. W. BAYARD.

PHILADELPHIA COUNTY, *ss:*

Joseph A. Ball, being duly sworn, says that he is the assistant treasurer of the corporation plaintiff and that the facts set forth in the foregoing statement as the basis of plaintiff's claim, are true.

JOSEPH A. BALL.

Sworn and subscribed to before me this 19th day of December, A. D., 1900.

[SEAL.] THOMAS S. GATES,
Notary Public.

Endorsed: No. 46, October sess., 1900, U. S. C. C. Spreckels Sugar Refining Co. *vs.* Penrose A. McClain, collector. Statement of plaintiff's demand. To clerk U. S. C. C. Enter a rule on defendant to plead in eight days or judgment *sec reg.*, Dec. 29, 1900. John G. Johnson, att'y for pl't'f, per J. W. Bayard. Filed Dec. 21, 1900, Samuel Bell, clerk.

10 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

THE SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN. } October Sessions, 1900, No. 46.

The above-named defendant pleads "not guilty."

JAMES B. HOLLAND,
United States Attorney, Att'y for Def't.

Endorsed: No. 46, Oct. S., 1900, United States circuit court. Spreckels Sugar Refining Co. *vs.* McClain. Plea. James B. Holland, U. S. att'y. Filed Dec. 31, 1900, Samuel Bell, clerk.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

THE SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN. } October Session, 1900, No. 3 and No. 46.

(Consolidated causes.)

Bill of Exceptions.

Be it remembered, that in the said sessions of October, 1900, came the plaintiff unto the said court and impleaded the said defendant

in two certain pleas of assumpsit, etc., in which the said plaintiff declared (*prout narr.*) and the said defendant pleaded (*prout* pleas) and thereupon issue was joined between them in each of said causes.

And afterwards, to wit, at the session of the said court held at Philadelphia in the district aforesaid before the Honorable John B. McPherson, judge of the said court, on the 16th day of April,
11 1901, the aforesaid issues between the said parties came on to be tried by a jury of the said district for that purpose duly empanelled (*prout* list of jurors), at which day came as well the said plaintiff as the said defendant by their respective attorneys; and thereupon it was agreed by and between the said parties that the said issues should be consolidated and tried as one cause; and the jurors of the jury aforesaid empanelled to try the said issues being also called came and were then and there in due manner chosen and sworn or affirmed to try the said causes; and upon the trial the counsel of the said plaintiff and of the said defendant offered evidence as follows:

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN. } October Term, 1900, No. 3.

SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN. } October Sessions, 1900, No. 46.

Before McPherson, J., and a jury.

PHILADELPHIA, PA., TUESDAY, *April* 16, 1901.

Appearances.

John G. Johnson and J. Wilson Bayard, Esqs., for plaintiff.
James B. Holland, Esq., U. S. district attorney, and J. Whitaker Thompson, Esq., assistant U. S. district attorney, for defendant.

JOSEPH A. BALL, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. What is your business?
A. Assistant treasurer of the Spreckels Sugar Refining Company.
12 Q. That company is engaged in what business?
A. Manufacturing and refining of sugar.
Q. Has it any property in the shape of wharves?
A. It has.
Q. Where are those wharves situated?

A. On the Delaware river.

Q. How many of them are there?

A. Three.

Q. Does it have any receipts in connection with those wharves?

A. It does.

Q. What is the general nature of its receipts; what is it called; what is the name of what it gets?

A. Wharfage.

Q. Tell us what you mean by wharfage, and how it gets receipts from that?

A. The vessel comes to the wharves and pays for the privilege of lying at the wharf for the time that it lies there.

Q. And those wharf charges, are they whatever the owner can get, or is there some general tariff of charges?

A. A general tariff of so much a ton.

Q. This company owns wharves, and it is in the receipt of moneys from the vessels which lie there and which pay wharfage charges thereon?

A. Yes, sir.

Q. You will give us presently a statement of the receipts since the war revenue act went into effect, which had been included in your returns to the Government, will you?

A. Yes, sir.

Q. Does it receive interest of any sort from investment or use of its money, and if so, what?

A. Yes, sir.

Q. Tell us how and what.

A. Interest for the use of its money, if it is deposited in some banks, and for investments which they may have. Receipts from that.

Q. That interest, has that anything to do with the sugar refining or its receipts from sugar refining?

A. No, sir.

Q. As manufacturers and refiners of sugars it has sold, since the war revenue act, a considerable amount of sugar, has it not?

A. Yes, sir.

13 Q. Those returns have been made from time to time to the Government, have they?

A. They have.

Q. And these returns were made monthly on all the receipts of the sugar refining company, the first being made October 5, 1898, was it not?

A. Yes, sir.

Q. And the first three were made in October, and thereafter pretty near monthly, were they not?

A. Yes, sir.

Q. Do you know whether the tax was paid at the end of the year or upon those returns monthly?

A. It was paid upon those returns monthly.

Q. Was that voluntarily made, or how?

A. Made by notice from the collector that if we did not pay it he would take steps to collect it.

Q. The amount was paid, then, under protest, the regular claims were made to the Commissioner of Internal Revenue every return, and were regularly denied by him, were they not?

A. Th-y were; yes, sir.

Q. There was another item that we call stevedoring, which you included in your return, was there not?

A. Yes, sir.

Q. I wish you would tell the jury what you mean by stevedoring. What were your receipts from stevedoring?

A. It is the business of the vessel discharging its own cargo. The vessel employs outside people to do that and in these cases the vessels employed the sugar refinery to do that discharging for them, they hiring the men and unloading the vessel, and the vessel paying for that work. These receipts were the receipts received from that work.

Q. The ships that come here and charter come under a charter, making it the duty of the ships to unload and do the stevedoring?

A. Yes, sir.

Q. And then you, in order to get the service done more to your satisfaction, charge the vessel for that stevedoring, do you, and get it done yourself?

A. We do.

Q. You then employ the regular stevedores at the port, who do the work for you, and pay them?

A. We have a stevedore who does our work, and we employ the men who are 'longshoremen, along the wharf, to do that work.

14 Q. The business of stevedoring is a special business known as stevedoring, is it not?

A. Yes, sir.

Q. If you did not agree with the vessel that you would do it for them for that charge, the vessel would have to hire its stevedores?

A. Yes, sir.

Q. You have here tabulated statements showing the period covered by each monthly return, the amount of your inclusions for indebtedness due before June 14, 1898, for interest, from rent and wharfage, from stevedoring, and from sales, have you not?

A. Yes, sir.

Q. Covering both these suits?

A. Yes, sir.

Q. And also of the tax paid, the dates of payment, and the gross receipts?

A. Yes, sir.

(The United States denies the right and claim to any return on any of these items for any reason, but is willing to accept the statement as correctly stating the receipts from the different sources, the dates of returns and the dates of payment.)

Q. Those are the statements, are they, in the two different suits (handing witness papers)?

A. Yes, sir.

Q. I will get you to make out and bring here to-morrow a statement, so that if necessary it may be included in the special verdict, first, your returns under the head of interest, with the amount of tax you paid thereon, the date thereof, and the interest on that from the date of payment up to to-morrow. Do the same thing with all the returns including all rent and wharfage, all stevedoring, and all indebtedness included upon transactions before the 14th of June, 1898, will you?

A. Yes, sir.

Q. And also make up a statement of the interest from the date when the same was paid monthly, down to the end of the fiscal year on the different payments. In each case until the first day of July of the year closing.

A. Yes, sir.

Q. There is another item of indebtedness due before June 14, 1898. Those amounts of receipts in the different months were included in your monthly returns, were they?

A. Yes, sir.

Q. Tell us what that item means.

15 A. That item includes all the business done previous to that date; receipts from business done previous to the 14th of June.

Q. In that claim is included no receipts from any business done subsequently to the 14th of June, 1898, but simply the collections of indebtedness which was due for transactions made before that date. Is that so?

A. That is what that claim covers.

Q. Your claim "sugar sold since June 14, 1898," includes your receipts from sugar sold by you, whether manufactured by you or refined by you, or manufactured and refined by you, does it?

A. Yes, sir.

Q. You sell, to some extent, sugar directly, but to a small extent, your company?

A. Yes, sir.

Q. And you have included all your receipts from sugar sold since the 14th of June, 1898, in the column headed "Sugar sold since June 14, 1898," have you?

A. Yes, sir.

Q. Then this Schedule A gives the period of receipts covered by each return, does it. Under the head of "Indebtedness due before June 14, 1898," it gives the amount included in each monthly return of collections from transactions antecedently to that time?

A. Yes, sir.

Q. The column headed "Interest" gives the amount included in your monthly returns of collections of interest accounts on your investments after June 14, 1898?

A. Yes, sir.

Q. The column headed "Rent and wharfage" gives the amount included in your monthly return of receipts from rent and wharfage as you described it?

A. Yes, sir.

Q. The stevedoring gives the amounts included in each monthly return from stevedoring, as you have described it, does it?

A. Yes, sir.

Q. The "Sugar sold since June 14, 1899," includes all your receipts as included in the returns from sugar sold in any way, whether manufactured or refined or both, since June 14, 1898?

A. Yes, sir.

Q. The "Gross receipts" means the amount of your return in total of all receipts from all sources in each month, upon which you were compelled to pay the tax, does it?

A. Yes, sir.

16 Q. And the column headed "Amount of tax paid" states the amount of tax upon each monthly return which you were made to pay, does it?

A. Yes, sir.

Q. And the "Dates of payment" means the times when you paid the respective sums?

A. Yes, sir.

Q. And the same remark applies to Schedule A, second sheet?

A. Yes, sir.

Cross-examination.

By Mr. THOMPSON:

Q. You import a large part of your raw sugar, do you not?

A. Large parts of it.

Q. Import that into the port of Philadelphia?

A. Largely.

By Mr. JOHNSON:

Q. They are foreign sugars?

A. Yes, sir.

By Mr. THOMPSON:

Q. You stated, did you not, when a vessel brings you a cargo of sugar, the vessel is liable for the stevedoring?

A. It is the business of the vessel to discharge her own cargo.

Q. And it is also the business of the vessel to procure its own wharf, is it not?

A. Yes, sir.

Q. The wharves which were erected by you, you rent to these vessels bringing in cargoes of sugar for your use in your refinery, do you not?

A. We use the sugar that those vessels bring; yes, sir.

Q. And you charge those vessels, which bring this cargo, wharfage?

A. We charge them wharfage.

Q. You also furnish them with stevedores for unloading their vessels, and charge them with that?

A. If we make a contract with the vessels to do the work; yes, sir, we charge them with stevedores.

Q. Most of these cargoes of sugar are sold to deliver on the wharf, are they not?

A. Very few of them.

17 Q. How are they sold?

A. A large portion of them are imported by ourselves.

Q. You purchase the cargo abroad, do you?

A. Most of the cargo.

Q. Do you charter the vessel?

A. We do not usually. Sometimes we do.

Q. These wharves which were erected by your company were they not erected for the purpose of unloading vessels which bring cargoes of sugar to you?

A. They were erected for the purpose of using them as wharves for any business that we may have, or see fit to use.

Q. The large part of the business that you have in connection with these wharves is unloading sugar which is consigned to you, is it not?

A. The larger part is.

Q. In fact, nearly all of it?

A. Yes, sir; nearly all of it.

Q. Is it not also the case that this stevedoring, which you claim is part of the gross receipts, is a charge made by you against the vessels which are bringing in cargoes of sugar for your refinery. You do not do any outside stevedoring business besides unloading vessels of sugar, do you?

A. Not outside of what we do at our own wharves.

Q. And not outside of cargoes of sugar which you import?

A. If a vessel was discharging at our wharf, we might not have imported the sugar, and yet might do the stevedoring.

By the COURT:

Q. The question is, do you do stevedoring for anything else but cargoes of sugar to you?

A. I should say not for anything except what is at our wharf.

Q. Do you do stevedoring for any other vessels except those carrying cargoes of sugar?

A. We have sometimes done stevedoring for goods outside of, for instance a steamer coming to our wharf might have other goods than sugar, and we have sometimes taken out those goods.

By Mr. THOMPSON:

Q. That is an exceptional case.

A. Particularly so. The most of the business is discharging of sugar.

Q. Of your own sugar?

18 A. Sugar coming to our wharf.
Q. Sugar destined for your refineries?
A. Yes, sir.
Q. These amounts of your gross receipts, which you claim are an account of interest, that is for interest on the corporate funds of the company, is it not, which you have invested in different ways, while you were not using them in your business or in the refining of sugar.
A. It is.
Q. Part of the funds which are incidental to and used in your business?
A. It is interest on any money that we may have, or any investments which we may have is included in that item.

Mr. JOHNSON: We offer these schedules in evidence.

By the COURT:

Q. Are your wharves used by any other vessels except those carrying sugar?
A. Very rarely. Once in a while some of the vessels, but mostly our vessels coming to us.

Mr. THOMPSON: I offer in evidence a certified copy of the charter of the Spreckels Sugar Refining Company. (*Prout* same.)
I also offer in evidence the monthly returns of gross receipts, and the tax lists on which they were assessed. (*Prout* same.)
Adjourned until Wednesday, April 17, 1901, at 10 a. m.

Second day, April 17, 1901.

Mr. Thompson offers in evidence an authenticated copy of the regulations of the Commissioner of the Treasury, under which these taxes were collected by the collector of internal revenue. (*Prout* same.)
Testimony closed.
The COURT: Gentlemen, the parties have agreed upon all the facts in this case, and put it in the form of a special verdict, so the court may afterwards pass upon the questions of law. You simply find this special verdict for the plaintiff, leaving the matter to the court for further consideration.
19 The following is a copy of the regulations of the Commissioner of Internal Revenue offered in evidence as aforesaid:

UNITED STATES OF AMERICA:

TREASURY DEPARTMENT, *March* 12, 1901.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed is a true and correct copy of the original in this department.
In witness whereof, I have hereunto set my hand and caused the

seal of the Treasury Department to be affixed, on the day and year first above written.

O. L. SPAULDING,
Acting Secretary of the Treasury.

L. J.
D. M. G.

[SEAL.]

Gross Receipts Taxable under Section 27, Act of June 13, 1898.

1899.

Department circular No. 93.

Internal revenue No. 540.

Treasury Department, office of the Commissioner of Internal Revenue.

WASHINGTON, D. C., *July* 7, 1899.

To collectors of internal revenue and others:

Section 27 of the act of June 13, 1898, provides:

That every person, firm, corporation, or company carrying on or doing the business of refining petroleum, or refining sugar, or owning or controlling any pipe line for transporting oil or other products, whose gross annual receipts exceed two hundred and fifty thousand dollars, shall be subject to pay annually a special excise tax equivalent to one-quarter of one per centum on the gross amount of all receipts of such persons, firms, corporations, and companies in their respective business in excess of said sum of two hundred and fifty thousand dollars.

20 And a true and accurate return of the amount of gross receipts as aforesaid shall be made and rendered monthly by each of such associations, corporations, companies, or persons to the collector of the district in which any such association, corporation or company may be located, or in which such person has his place of business. Such return shall be verified under oath by the person making the same, or, in case of corporations, by the president or chief officer thereof. Any person or officer failing or refusing to make return as aforesaid, or who shall make a false or fraudulent return, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars for each failure or refusal to make return as aforesaid and for each and every false or fraudulent return.

Section 31 of the same act provides:

That all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed are hereby made applicable to this act.

Section 3447 of the Revised Statutes of the United States provides:

Whenever the mode or time of assessing or collecting any tax

which is imposed is not provided for, the Commissioner of Internal Revenue may establish the same by regulation. He may also make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

(1.) Tax when due to be assessed.—The tax imposed by section 27, above quoted, being a special excise tax, the word "annually" as used in that section is held to apply to the special-tax year (commencing July 1), as defined in section 53 of the act of October 1, 1890.

Under the provisions of section 31, above quoted, it is also held that the tax thus imposed is assessable as soon as determined from the monthly returns required to be rendered.

(2.) Gross receipts.—As the tax so imposed is to be computed on "the gross amount of all receipts" in excess of $250,000, such gross receipts are held to include not only receipts from sales (or transportation), but all receipts, including rents, interest, dividends, storage charges, or commission, received from or in connection with the business enumerated in said section 27, during the period for which the required return is made. Deductions on account of cost of raw materials, customs duties, and operating expenses, heretofore claimed in certain cases, are under no circumstances permissible.

(3.) Returns, when and by whom to be made.—Every person, firm, corporation, or company liable to tax under said section 27 will hereafter render a return, on form 420 revised, of the gross
21 amount of all receipts each month, and not later than the fifteenth day of the following month. When the returns made include the receipts of any branch or "constituent" company engaged in the business of refining petroleum or sugar, or in operating any pipe line in the same or in another district, the name and location and the receipts of each such branch or constituent company should be stated in each return rendered.

The foregoing instructions will also apply to all such persons, firms, corporations, and companies where the gross receipts, during the period for which the return required by law is made, do not exceed the $250,000 specially exempted from tax. A monthly return will also be required during the temporary suspension of business. Where, however, the business carried on has been permanently discontinued, that fact should be noted on the last return rendered.

(4.) Change in name of firm, etc.—Changes in the name or style of any firm or company, or in the personnel of any firm or company which has become liable for the special tax imposed, will not be regarded, under the act named, as constituting a new firm or company. In all such cases, therefore, the exemption of $250,000 will be allowed only on the combined annual gross receipts of the firm or company as to which such changes occur.

(5.) Sugar produced and refined by continuous process.—Manufacturers who claim to refine only sugar of their own production, and to sell directly to consumers, will also be required to furnish a monthly sworn statement (to be attached to the prescribed return, form 420, revised), setting forth specifically that all sugar refined

by them during the month was produced and owned by them, and was refined on the same premises where produced and by a continuous process, and was sold directly to consumers. Persons, firms, corporations, and companies refining sugar not so produced, owned and sold, will be liable to the special *excise tax imposed*, and will be required to render a return on the prescribed form of the gross amount of all receipts.

(6.) Sugar or oil refined by agents, et -Every person, firm, corporation, or company owning or controlling any sugar or oil refinery, and, under any lease, contract, or agreement, receives, sells, or negotiates the sale of any sugar or oil refined on the premises so owned or controlled, or receives any profits accruing therefrom, will be regarded as a refiner, and, as such, will be required to make the prescribed return. Where the receipts or profits so realized, or any portion thereof, are included in the returns rendered by the person, firm, or company in whose name, or through whose agency, the business is so carried on, the fact should be noted on the returns as provided in instruction 3 of this circular.

22 The same instructions will apply to persons, firms, corporations, or companies owning or controlling any pipe line for the transportation of oil or other products.

(7.) Returns to be verified under oath.—In case of corporations, the returns made must in every instance be verified under oath by the president or chief officer, as required by law. This requirement does not admit of such verification by a cashier, secretary or treasurer, or by any officer other than that designated by law.

In case of a firm, the returns should be verified by a member thereof who should sign his name as such to each return rendered.

The required return being under oath, and containing statements based on personal knowledge, the same will not, in any case, be accepted if made by an agent or attorney of the person or officer required to make the same.

(8.) Original returns to be furnished with assessment list.—The original returns, form 420 revised, should in all cases be forwarded by collectors to the Commissioner of Internal Revenue with the lists, form 23, on which the assessment is to be made. Unless such returns are filed in duplicate, copies thereof should be retained in the collector's office.

(9.) Changes in the prescribed form not permitted.—No erasures or interlineations in the prescribed form should be made in any case.

Where exemptions, other than the $250,000 are claimed, or where the return rendered is made under protest, such exemptions or protest may be noted, either on the margin of the return or in a memorandum attached thereto.

Collectors will see that the foregoing instructions are carefully complied with in every case, and that all persons, firms, corporations, and companies in their respective districts, engaged in the business enumerated in section 27, are furnished with a copy of this circular, and with sufficient blanks (form 420 revised) on which to make the

required returns. Any failure to make the required return, or the making of any false or fraudulent return, should be at once reported to the Commissioner of Internal Revenue in order that proceedings may be instituted *for the enforcement of the penalties imposed* in such cases.

ROB'T WILLIAMS, JR.,
Acting Commissioner.

Approved:
L. J. GAGE, *Secretary.*

[SEAL.]

23 And thereupon, on the 17th day of April, 1901, the jury found and returned a special verdict in said cause, as follows:

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN. } October Sessions, 1900, No. 3.

SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN. } October Sessions, 1900, No. 46.

Special Verdict.

The jury as a special verdict do find that during the period covered by the first suit to October sessions, 1900, No. 3, returns were made by the plaintiff to the defendant of its receipts as per Schedule A. hereto attached which is a summary of returns of Spreckels Sugar Refining Company covering its entire gross receipts from June 14, 1898. to March 1, 1900; that the column headed "Period covered by returns" shows the month for which the returns were made; that the column headed "Indebtedness due before June 14, 1898," covers the amounts included in the monthly returns from month to month of receipts by the company for sugars sold and delivered antecedently to June 14, 1898. No receipts for sugars sold subsequently to June 14, 1898, are included in said column. The column headed "Interest" gives the amounts included in said monthly returns of receipts during the month by the plaintiff derived from interest upon its investments of monies and property as explained by the testimony of Mr. Ball. The column headed "Rent and wharfage" gives the amounts included in said monthly returns from time to time of receipts during each month by the plaintiff as rent and wharfage of its property, said rent and wharfage being paid as is explained in the testimony of Mr. Ball. The column headed "Stevedoring" gives the receipt in each month included in its monthly returns by the corporation plaintiff from "stevedoring." Said receipts from stevedoring were had in

the way and manner explained in the testimony of Mr. Ball.

The column headed "Sugars sold since June 14, 1898,"
24 gives the amount of receipts in each month included in said monthly returns from all sales of sugar whether manufactured and refined, manufactured or refined or sold without manufacturing or refining by the corporation plaintiff since the 14th day of June, 1898. The column headed "Gross receipts" states the amounts of each monthly return made by the corporation plaintiff of its receipts in the respective months and includes all its receipts from every source. It is the aggregate of the returns under the five special heads just described. The column headed "Amount of tax paid" gives the amount paid at each monthly time of payment by the corporation plaintiff upon the total amount of its gross receipts as returned for the month in the preceding column. The column headed "Dates of payment" gives the date of payment of each of the amounts stated in the preceding column.

The Schedule A being "Summary of the returns of Spreckels Sugar Refining Company covering its entire gross receipts from March 1, 1900, to August 1, 1900" gives similar particulars concerning all the transactions covered by the second suit to October sessions, 1900, No. 46.

The jury find that the defendant, The Collector of Internal Revenue, compelled the corporation plaintiff to pay under protest at the respective times mentioned in the column headed "Dates of payment" the amount of the tax upon the monthly returns; that an appeal was duly made to the Commissioner of Internal Revenue; and that before each of the suits was brought the Commissioner of Internal Revenue as to the amounts comprised in said suits refused to make any allowance or return of the sums paid.

The jury further find that in the suit, October sessions, 1900, No. 3, the tax paid upon "indebtedness due before June 14, 1898" collected as above stated was $512.27; and that the interest upon said amount calculated from the time of payment to the present date is $77.42.

The jury further find that the amount of the tax paid upon returns of "interest" as above explained was $72.28; and that the interest on said payment calculated from the date of the respective payments thereof to the present time is $8.11.

The jury further find that the total amount of tax paid upon receipts from "rent and wharfage" was $45.97; and that the interest thereon calculated as above stated is $5.12.

The jury further find that the tax paid upon the receipts from "stevedoring" during the time covered by said suit was $357.83; and that the interest thereon calculated as aforesaid is $40.55.

The jury further find that the total amount of tax paid
25 upon all gross receipts during the period covered by said suit was $134,560.72 and that the interest thereon calculated as above stated is $14,855.93.

The jury find that the amount of the interest on the amounts paid monthly calculated from the date of the respective payments until

the close of the year ending first day of July, 1899, and first day of July, 1900, was $3,321.23.

The jury find that in the suit to October sessions, 1900, No. 40, the tax paid upon "indebtedness" due before June 14, 1898, collected as above stated, was $1.29; and that the interest upon said amount calculated from the time of the payment to the present date is $0.07.

The jury find that the amount of the tax paid upon returns of "interest," as above explained, was $14.37; and that the interest on said payment calculated from the date of the respective payments thereof to the present time is $0.58.

The jury further find that the total amount of tax paid upon receipts from "rent and wharfage" was $7.00; and that the interest thereon, calculated as above stated, is $0.28.

The jury further find that the tax paid upon the receipts from "stevedoring" during the time covered by said suit was $64.69; and that the interest thereon, calculated as aforesaid, is $2.70.

The jury further find that the total amount of tax paid upon all gross receipts during the period covered by said suit was $32,049.60 and that the interest thereon, calculated as above stated, is $1,354.23.

The jury find that the amount of the interest on the amounts paid monthly, calculated from the date of the respective payments until the close of the year ending first day of July, 1900, and first day of July, 1901, was $36.75.

The jury further find that the plaintiff, The Spreckels Sugar Refining Company, is a corporation incorporated under the laws of the State of Pennsylvania "for the purpose of refining sugar, which will involve the buying of raw material therefor, and selling the manufactured products, and of doing whatever else shall be incidental to the said business of refining."

If the court shall be of the opinion that the plaintiff has a cause of action against the defendant for the total amount of taxes paid on all gross receipts during the period covered by said suit, they find for the plaintiff in the respective suits for the amounts so found to have been paid, with interest thereon as above stated, otherwise they find for the defendant.

If the court shall be of the opinion that the plaintiff is not entitled to recover the total amount of the taxes paid upon the plaintiff's gross receipts as aforesaid, but is entitled to recover for the

SCHEDULE A.

Summary of Returns of Spreckels Sugar Refining Company Covering its Entire Gross Receipts from June 14, 1898, to March 1, 1900.

Period covered by return.	Indebtedness due before June 14, 1898.	Amounts received from—			Sugars sold since June 14, 1898.	Gross receipts.	Amount of tax paid.	Dates of payment.
		Interest.	Rent and wharfage.	Stevedoring.				
June 14 to June 30, 1898	$138,251 06	$12 50	$143 22	$2,168 85	$660,865 07	$801,440 70	$1,378 50	October 11, 1898.
July, 1898	32,905 97	595 82	1,677 27	14,460 09	2,610,456 47	2,660,095 62	6,025 24	October 11, 1898.
August, 1898	3,700 52	344 65	202 77	2,901 53	2,568,733 96	2,575,883 43	6,439 71	October 11, 1898.
September, 1898	18,930 91	229 48	717 30	5,058 27	4,201,841 02	4,226,776 98	10,566 94	October 31, 1898.
October, 1898	5,253 92	1,989 30	598 09	5,759 88	2,521,937 23	2,535,538 42	6,338 84	December 6, 1898.
November, 1898	590 94	347 32	549 87	5,958 62	2,224,886 86	2,232,332 71	5,580 83	January 23, 1899.
December, 1898	1,029 50	10,093 19	1,407 90	5,194 97	2,066,470 21	2,084,195 77	5,210 49	January 23, 1899.
January, 1899	424 00	1,881 93	962 05	8,587 00	2,224,484 45	2,236,339 43	5,590 85	April 3, 1899.
February, 1899	708 00	258 24	1,035 17	7,735 67	1,806,288 15	1,816,025 23	4,540 06	May 2, 1899.
March, 1899	241 26	256 40	1,442 51	12,201 06	2,716,352 23	2,730,493 46	6,826 23	June 6, 1899.
April, 1899	718 30	1,675 00	976 41	6,831 55	2,677,349 48	2,687,550 74	6,718 88	July 1, 1899.
May, 1899	97 00	801 52	1,424 03	9,174 53	3,297,595 69	3,309,092 77	8,272 73	August 3, 1899.
June, 1899	212 00	828 44	798 02	8,084 65	3,796,616 12	3,806,539 23	9,516 35	August 3, 1899.
July, 1899	317 00	119 68	977 73	7,520 79	3,515,692 85	3,524,628 05	8,186 57	September 2, 1899.
August, 1899	203 71	169 84	826 55	5,663 82	2,893,924 75	2,900,788 67	7,251 97	October 5, 1899.
September, 1899	.....	209 85	1,376 37	9,026 89	3,155,113 48	3,165,726 57	7,914 32	November 8, 1899.
October, 1899	.....	2,992 87	726 92	6,644 55	2,557,970 53	2,568,334 87	6,420 83	December 2, 1899.
November, 1899	.....	2,109 17	874 56	4,885 10	1,728,822 66	1,736,691 49	4,341 73	January 12, 1900.
December, 1899	.....	1,695 18	569 48	4,227 75	2,319,139 22	2,325,631 63	5,814 08	February 9, 1900.
January, 1900	323 93	37 34	444 89	4,835 16	2,163,452 22	2,169,093 54	5,422 73	March 13, 1900.
February, 1900	1,005 39	2,276 63	655 08	6,207 72	2,470,952 76	2,481,097 58	6,202 74	April 23, 1900.
Total	$204,912 51	$28,924 35	$18,386 29	$143,146 45	.....	.....	$134,560 72	

SCHEDULE A.

Summary of Returns of Spreckels Sugar Refining Company Covering its Entire Gross Receipts from March 1, 1900, to August 1, 1900.

Period covered by return.	Indebtedness due before June 14, 1898.	Interest.	Amounts received from—		Sugars sold since June 14, 1898.	Gross receipts	Amount of tax paid.	Dates of payment.
			Rent and wharfage.	Stevedoring.				
March, 1900	$517 92	$152 88	$3 5 48	$2,831 23	$2,162,298 33	$2,166,165 84	$5,415 41	May 28, 1900.
April, 1900	.....	903 04	690 66	6,247 94	2,082,462 63	2,090,304 27	5,225 76	June 22, 1900.
May, 1900	.....	1,453 99	923 68	6,472 38	2,217,753 54	2,226,603 59	5,566 51	August 4, 1900.
June, 1900	.....	917 69	88 87	2,472 16	3,481,120 75	3,484,599 47	8,711 49	September 12, 1900.
July, 1900	.....	2,323 65	649 76	7,850 60	3,091,349 45	3,102,173 46	7,130 43	September 12, 1900.
Total	$517 92	$5,751 25	$2,718 45	$25,874 31	.....	.....	$32,049 60	

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28 amount paid upon any of the items included in its returns of gross receipts as above set forth, they find for the plaintiff for the amounts so found to have been paid, with interest as aforesaid, otherwise they find for the defendant.

If the court shall be of the opinion that the plaintiff has cause of action against the defendant for interest upon the amounts paid monthly as above set forth, they find for the plaintiff for the said amounts of interest, otherwise they find for the defendant.

And thereupon, on the 18th day of May, 1901, the said judge filed an opinion and judgment in said cause as follows:

The parties to this action have agreed upon a special verdict of which the following are the material portions:

"The jury as a special verdict do find that during the period covered by the first suit to October sessions, 1900, No. 3, returns were made by the plaintiff to the defendant of its receipts as per Schedule A hereto attached, which is a summary of returns of Spreckels Sugar Refining Company covering its entire gross receipts from June 14, 1898, to March 1, 1900; that the column headed "Period covered by returns" shows the month for which the returns were made; that the column headed "Indebtedness due before June 14, 1898" covers the amounts included in the monthly returns from month to month of receipts by the company for sugars sold and delivered antecedently to June 14, 1898. No receipts from sugars sold subsequently to June 14, 1898, are included in said column. The column headed "Interest" gives the amounts included in said monthly returns of receipts during the month by the plaintiff derived from interest upon its investments of moneys and property as explained by the testimony of Mr. Ball. The column headed "Rent and wharfage" gives the amount included in said monthly returns from time to time of receipts during each month by the plaintiff as rent and wharfage of its property, said rent and wharfage being paid as is explained in the testimony of Mr. Ball. The column headed "Stevedoring" gives the receipt in each month included in its monthly returns by the corporation plaintiff from "stevedoring." Said receipts from stevedoring were had in the way and manner explained in the testimony of Mr. Ball. The column headed "Sugars sold since June 14, 1898" gives the amount of receipts in each month included in said monthly returns from all sales of sugar whether manufactured and refined, manufactured or refined, or sold without manufacturing or refining, by the corporation plaintiff since the 14th day of June, 1898. The column headed "Gross receipts" states the amounts of each monthly return made by the corporation plaintiff of its receipts in the respective months and includes all its receipts from every source. It is the aggregate of the returns under the five special
29 heads just described. The column headed "Amount of tax paid" gives the amount paid at each monthly time of payment by the corporation plaintiff upon the total amount of its gross receipts as returned for the month in the preceding column. The column headed "Dates of payment" gives the date of payment of each of the amounts stated in the preceding column.

"The Schedule A being "Summary of returns of Spreckels Sugar Refining Company covering its entire gross receipts from March 1, 1900, to August 1, 1900" gives similar particulars concerning all the transactions covered by the second suit to October sessions, 1900, No. 40.

"The jury find that the defendant, The Collector of Internal Revenue, compelled the corporation plaintiff to pay under protest at the respective times mentioned in the column headed "Dates of payment" the amount of the tax upon the monthly returns; that an appeal was *only* made to the Commissioner of Internal Revenue; and that before each of the suits was brought, the Commissioner of Internal Revenue as to the amounts comprised in said suits refused to make any allowance or return of the sums paid. * * *

"The jury find further that the plaintiff, The Spreckels Sugar Refining Company, is a corporation incorporated under the laws of the State of Pennsylvania for the purpose "of refining sugar, which will involve the buying of raw material therefor, and selling the manufactured products, and of doing whatever else shall be incidental to the said business of refining."

"If the court shall be of the opinion that the plaintiff has a cause of action against the defendant for the total amount of taxes paid on all gross receipts during the period covered by said suit, they find for the plaintiff in the respective suits for the amounts so found to have been paid, with interest thereon as above stated, otherwise they find for the defendant.

"If the court shall be of opinion that the plaintiff is not entitled to recover the total amount of the taxes paid upon the plaintiff's gross receipts as aforesaid, but is entitled to recover for the amount paid upon any of the items included in its returns of gross receipts, as above set forth, they find for the plaintiff for the amounts so found to have been paid, with interest as aforesaid, otherwise they find for the defendant.

"If the court shall be of the opinion that the plaintiff has a cause of action against the defendant for interest upon the amounts paid monthly, as above set forth, they find for the plaintiff for the said amounts of interest, otherwise they find for the defendant.

The principal question raised by this case is the constitutionality of section 27 of the war revenue act of June 13, 1898, so far as
30 sugar refiners are concerned. The plaintiff contends that the tax imposed by the section is a direct tax, specifically laid upon the gross receipts of refiners, and is invalid because it is not apportioned in accordance with article 1, section 9, clause 4, of the Federal Constitution; while the Government contends that the tax is valid because it is not a direct tax, but an excise laid upon the business of refining and not upon the receipts themselves arising from the business. The present suit is a test case, destined for the Supreme Court of the United States, and therefore I shall not undertake the superfluous and somewhat difficult task of discussing the numerous decisions which have more or less bearing on the controversy. A question of taxation is peculiarly a question for a court of

last resort; for the discussion of the subject belong- essentially to a region of fiction and construction, and the final decision is often determined by considerations of policy alone. Every tax, in the final an-lysis, is an exaction from an individual, or a corporate, taxpayer; but in many an instance the discussion stops short of this point, and treats the tax as if it were to be satisfied by the inanimate object, or the immaterial franchise, in respect of which it has been imposed. Frequent examples of such use of words may easily be found, and this method of speech has led, I think, to much confusion and discord among the cases, so that it is not hard to find ample authority on almost any phase of a controversy concerning taxation. In the case now before the court, it would not be difficult to choose from the decisions that have been cited by the respective parties, sufficient authority to support either conclusion, and, in this state of the question, I believe my duty to be fully performed when I sustain the constitutionality of the section without discussion, on the ground that I have not been clearly satisfied that it ought to be stricken down.

Several questions remain to be decided, upon which I shall express my opinion briefly. First: Was the collector justified in demanding monthly payments? I answer this question in the affirmative. The tax is no doubt an annual tax in the sense that it is to be paid each year; and, if provision for its assessment and collection had been made by the act, such provision would have been obligatory both upon the Government and upon the refiner. But, as no such provision is to be found, and as section 31 expressly declares, "That all administrative, special or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed, are hereby made applicable to this act," it seems to follow, that by virtue of this section all the provisions of section 3447 of the Revised Statutes become applicable. By the last named section, it is declared that "whenever the mode or time of assessing or collecting any tax which is imposed is not pro-
31 vided for, the Commissioner of Internal Revenue may establish the same by regulation." Such a regulation was made by the Commissioner on July 7, 1899, by a circular, to be found in Treasury Decisions No. 21,367, containing the following instruction to collectors of internal revenue, "Under the provisions of section 31, above quoted, it is also held that the tax imposed is assessable as soon as determined from the monthly returns required to be rendered." At least after July 7, 1899, therefore, the monthly assessments were expressly warranted by law. Before that date, I think that the act itself made the assessment, under the rule laid down in Savings Bank *vs.* United States, 19 Wall., 240, and in King *vs.* United States, 99 U. S., 233. In the former case Mr. Justice Strong used the following language: "Nor is there anything in the objection that the taxes for which judgment has been recovered in this case had not been assessed. No other assessment than that made by the statute was necessary to determine the extent of the bank's liability. An assessment is only determining the value of the thing taxed,

and the amount of the tax required of each individual. It may be made by designated officers, or by the law itself. In the present case, the statute required every savings bank to pay a tax of five per cent. on all undistributed earnings made, or added during the year to their contingent funds. There was no occasion or room for any other assessment. This was a charge of a certain sum upon the bank, and without more it made the bank a debtor." This language is directly applicable to the present case, and whatever difficulty might have existed in applying the rule before July 9, 1899, to a case where the gross receipts did not at once appear from the monthly returns to exceed $250,000, no such difficulty is found in the case now under consideration, for the first return made by the plaintiff showed that the gross receipts for sugar sold since June 13, 1898—the date of the act—amounted in the last two weeks of that month to $660,865.07.

The second question is this: Was the plaintiff taxable in respect of money received after the passage of the act, although such money had been earned previously thereto. I think the answer must be, No. If the tax had been directly upon the plaintiff's gross receipts, the Government's position upon this point would be stronger for it might then be argued with a good deal of force, that the act taxed *all* gross receipts in excess of $250,000, and took no account of the sources from which they were derived, except to declare that they must be received in the business of refining. But, as the Government takes the position, that the tax is an excise upon the occupation of refining, measured by the annual receipts of the business, I think the inevitable inference is, that the business should be valued, either from the time the act was passed, or from the 1st of July succeeding—that being the beginning of the special tax year—
32 and that receipts which were the product of a preceding business activity should not be taken into account.

The third question concerns the taxability of interest received by the plaintiff upon its corporate funds, either deposited in bank or invested in income producing securities. This interest, I think, was properly included by the collector in determining the annual value of the business. It was corporate property, presumably used for corporate purposes, and was as much engaged in the business of refining as the capital invested in machinery or raw materials.

Similar observations may be made concerning the fourth question, namely; whether the receipts from capital invested in wharves was properly included. Scarcely any vessels lie at these wharves except the vessels that bring raw sugar to the plaintiff, and the wharves are used for the convenience and greater profit of the corporate enterprise. The money paid by the vessels for wharfage is, I think, a receipt of the business. The receipts from stevedoring, however, I think were not properly included. It is the duty of a vessel bringing sugar to the plaintiff, to unload the cargo; and, if this duty should be actually discharged by the vessel, the cost of stevedoring would be paid from another source than from the plaintiff's treasury. If, however, the plaintiff chooses to unload the cargo and to

charge the usual price for the work, this labor, it seems to me, is not done in the course of its business as a refiner, but merely in discharge of the vessel's obligation to unload at its own expense.

In accordance with the above opinion, the plaintiff is entitled to judgment as follows:

1. For tax paid upon $204,912.51 and $517.92 of receipts on account of business done before the passage of the act, and

2. For tax paid upon $143,146.45 and $25,874.31 of receipts for stevedoring; with the proper interest upon both sums.

The total amount which the plaintiff is entitled to recover is, therefore, $1,056.82, for which judgment will be entered.

(Exception to the plaintiff, and also to the defendant.)

And thereupon judgment was entered accordingly.

And thereupon the counsel for the said plaintiff excepted to the opinion and judgment of the said judge upon the following grounds:

1. Because the learned judge decided that section 27 of the act of Congress, approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," was valid and constitutional.

2. Because the learned judge decided that the plaintiff was liable to taxation under the provision of the said section of said act.

33 3. Because the learned judge decided that under the provisions of said act plaintiff was bound to pay the tax therein levied upon its gross receipts monthly as returns were made and rendered by it thereunder.

4. Because the learned judge did not decide that the plaintiff was only required to pay said tax under the provisions of said section of said act annually.

5. Because the learned judge decided that the plaintiff was liable under said section of said act to taxation, upon interest received by plaintiff upon its investments.

6. Because the learned judge decided that the plaintiff was liable to taxation under the provisions of said section of said act upon its receipts from rent and wharfage.

7. Because the learned judge did not decide that the plaintiff was in no event liable under the provisions of said section of said act to taxation upon its receipts from any other source than the sales made since the 13th day of June, 1898, of sugar by it manufactured.

And inasmuch as said opinion and judgment so excepted to do not appear upon the record, the said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion and judgment of the said court and request the seal of the judge aforesaid to be put to the same, according to the form of the statute in such case made and provided.

And thereupon the aforesaid judge, at the request of the said counsel for the plaintiff, did put his seal to this bill of exceptions pursuant to the aforesaid statute in such case made and provided, this 29th day of May, 1901.

[SEAL.] JOHN B. McPHERSON, *Judge.*

Endorsed: Nos. 3 and 46, Oct. sessions, 1900, U. S. C. C. Spreckels Sugar Refining Co. *vs.* Penrose A. McClain. Bill of exceptions for plaintiff. Agreed to. J. Whitaker Thompson, ass't U. S. att'y. John G. Johnson, for plaintiff. Filed May 29, 1901, Samuel Bell, clerk.

34 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN. } October Sessions, 1900, No. 3.

SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN. } October Sessions, 1900, No. 46.

(Consolidated causes.)

Specifications of Error.

1. The learned judge erred in deciding that section 27 of the act of Congress, approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," is valid and constitutional.

2. The learned judge erred in deciding that the plaintiff was liable to taxation under the provisions of the said section of said act.

3. The learned judge erred in deciding that under the provisions of said act plaintiff was bound to pay the tax therein levied upon its gross receipts monthly as returns were made and rendered by it thereunder.

4. The learned judge erred in not deciding that the plaintiff was only required to pay said tax under the provisions of said section of said act annually.

5. The learned judge erred in deciding that the plaintiff was liable under said section of said act to taxation upon interest received by plaintiff upon its investments.

6. The learned judge erred in deciding that the plaintiff was liable to taxation under the provisions of said section of said act upon its receipts from rent and wharfage.

7. The learned judge erred in not deciding that the plaintiff was in no event liable under the provisions of said section of said
35 act to taxation upon its receipts from any other source than the sales made since the 13th day of June, 1898, of sugar by it manufactured.

JOHN G. JOHNSON,
Per J. W. BAYARD,
For Plaintiff in Error.

May 28, 1901.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

SPRECKELS SUGAR REFINING CO.
vs.
PENROSE A. McCLAIN. } October Sessions, 1900, No. 3.

SPRECKELS SUGAR REFINING CO.
vs.
PENROSE A. McCLAIN. } October Sessions, 1900, No. 46.

(Consolidated causes.)

Petition for Writ of Error.

Spreckels Sugar Refining Company, plaintiff in the above entitled causes, being aggrieved by the final judgment made and entered by the court in the above entitled causes on the 18th day of May, A. D. 1901, whereby it is adjudged that the plaintiff shall recover therein only the sum of one thousand and fifty-six and 82/100 dollars, with interest from April 17, 1901, and that the 27th section of the act of Congress, approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes" is constitutional, comes now by its attorney, John G. Johnson, and petitions the court for an order allowing the said plaintiff to prosecute a writ of error from the said judgment to the circuit court of appeals of the United States for the third circuit in accordance with the laws of the United States in that behalf made and pro-
36 vided; and also that an order be made fixing the amount of security which plaintiff shall furnish upon such writ of error and that upon giving such security all further proceedings in this court shall be stayed until the determination of said writ of error by the said United States circuit court of appeals for the third circuit.

And your petitioner will ever pray.

JOHN G. JOHNSON,
Attorney for Petitioner.

May 28, 1901.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

SPRECKELS SUGAR REFINING CO.
vs.
PENROSE A. McCLAIN. } October Sessions, 1900, No. 3.

SPRECKELS SUGAR REFINING CO.
vs.
PENROSE A. McCLAIN. } October Sessions, 1900, No. 46.

Order.

And now, May 29, 1901, on motion of John G. Johnson for plaintiff, it is ordered that the writ of error to the United States circuit

court of appeals for the third circuit from the final judgment heretofore filed and entered in the above entitled cause, be and the same is hereby allowed and that a certified transcript of the record and of the proceedings herein be forthwith transmitted to the said court.

It is further ordered that the bond for damages and costs on said appeal be and the same is hereby fixed at five hundred dollars.

BY THE COURT.

37 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. McCLAIN. } October Sessions, 1900, No. 3.

SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. McCLAIN. } October Sessions, 1900, No. 46.

Stipulation to Consolidate Causes.

And now, April 16, 1901, it is agreed by and between the counsel for the plaintiff and defendant respectively in the above entitled causes, that the same shall be consolidated and tried as one cause.

JOHN G. JOHNSON,
Attorney for Plaintiff.
JAMES B. HOLLAND,
Attorney for Defendant.

Endorsed: Nos. 3 and 46, October sess., 1900, U. S. C. C. Spreckels Sugar Refining Company *vs.* Penrose A. McClain. Stipulation to consolidate causes. John G. Johnson, James B. Holland. Filed May 29, 1901, Samuel Bell, clerk.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. McCLAIN. } October Sessions, 1900, No. 3.

38 SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. McCLAIN. } October Sessions, 1900, No. 46.

(Consolidated causes.)

Stipulation as to the Record on Writ of Error.

And now, May 28, 1901, it is agreed by and between the counsel for the parties hereto, and the clerk of the circuit court is hereby directed that in making up the record upon any writ of error which

may be taken in these causes by either of the parties hereto, such record shall consist of the following described papers:

1. Statement of claim and plea in the suit to October sessions, 1900, No. 3.

2. Statement of claim and plea in the suit to October sessions, 1900, No. 46.

3. Bill of exceptions filed by the party taking such writ of error.

4. Specifications of error by the party taking such writ of error.

And no other papers.

JOHN G. JOHNSON,
Attorney for Plaintiff.
JAMES B. HOLLAND,
Attorney for Defendant.

Endorsed: Nos. 3 and 46, October sess., 1900, U. S. C. C. Spreckels Sugar Refining Company *vs.* Penrose A. McClain. Stipulation as to record on writ of error. John G. Johnson, James B. Holland. Filed May 29, 1901, Samuel Bell, clerk, H. R.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN.	October Sessions, 1900, No. 3.
39 SPRECKELS SUGAR REFINING CO. *vs.* PENROSE A. MCCLAIN.	October Sessions, 1900, No. 46.

(Consolidated causes.)

Know all men by these presents that we, Spreckels Sugar Refining Company as principal and Joseph A. Ball as surety, are held and firmly bound unto Penrose A. McClain in the full and just sum of five hundred dollars ($500) to be paid to the said Penrose A. McClain, his certain attorney, executors, administrators or assigns: To which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this third day of June, in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a session of the circuit court of the United States for the eastern district of Pennsylvania, in two certain suits dependent in said court between Spreckels Sugar Refining Company and Penrose A. McClain to October sessions, 1900, No. 3 and No. 46, a judgment was rendered in favor of the plaintiff on the 18th day of May, 1901, in the sum only of one thousand and fifty-six and 82/100 dollars, with interest from April 17, 1901.

And whereas, the said plaintiff being dissatisfied with the said

judgment and alleging that greater sums are due it in said suits than are awarded by said judgment to it, has obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the said suits and a citation filed to the said Penrose A. McClain citing and admonishing him to be and appear at the session of the United States circuit court of appeals for the third circuit to be holden at the city of Philadelphia in said circuit within thirty days.

Now the condition of the above obligation is such, that if the said Spreckels Sugar Refining Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] SPRECKELS SUGAR REFINING COMPANY,
By W. O. HAVEMEYER, *President.*

40 Attest:
[SEAL.] W. W. FRAZIER, *Secretary.*
JOSEPH A. BALL, *Surety.*

Sealed and delivered in the presence of—
HENRY C. MOTT.
G. W. BAILEY.

Endorsed: Nos. 3 and 46, October sessions, 1900, U. S. C. C. Spreckels Sugar Refining Company *vs.* McClain. Bond on writ of error. The within bond is satisfactory to defendant. J. Whitaker Thompson, ass't U. S. attorney for defendant.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America, for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the cases of Spreckels Sugar Refining Co. *vs.* Penrose A. McClain, Nos. 3 and 46, Oct. sess., 1900, as per stipulations of counsel, copies of which are hereto annexed, on file and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this seventh day of June, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-fifth.

[SEAL.] SAMUEL BELL,
Clerk of C. C.

41 And afterwards to wit, on the fourth day of October A. D. 1901, this cause being called for argument on the transcipt of record from the circuit court of the United States for the eastern

district of Pennsylvania before Hon. M. W. Acheson, Hon. George M. Dallas and Hon. George Gray, circuit judges, and being argued by counsel for the respective parties and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards to wit: on the thirteenth day of January A. D. 1902, comes the parties aforesaid by their counsel aforesaid, and the court now being fully advised in the premises renders the following opinion, to wit:—

42 In the United States Circuit Court of Appeals for the Third Circuit.

SPRECKELS SUGAR REFINING COMPANY, Plaintiff in Error,
v.
PENROSE A. MCCLAIN, Collector of Internal Revenue for the First District of Pennsylvania, Defendant in Error.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

Before Acheson, Dallas, and Gray, circuit judges.

DALLAS, *J.*:

The plaintiff below (and here) is a corporation erected under the law of Pennsylvania, for the purpose "of refining sugar, which will involve the buying of the raw material therefor and selling the manufactured products, and of doing whatever else should be incidental to the said business of refining." The defendant is the collector of internal revenue for the first district of Pennsylvania. The action was brought to recover certain sums of money which he had exacted under section 27 of the war revenue act of 1898, and which the plaintiff had paid under protest. That section is as follows:

"That every person, firm, corporation, or company carrying on or doing the business of refining petroleum, or refining sugar, or owning or controlling any pipe line for transporting oil or other products, whose gross annual receipts exceed $250,000, shall be subject to pay annually a special excise tax equivalent to one quarter of one per centum on the gross amount of all receipts of such persons, firms, corporations, and companies in their respective business in excess of said sum of $250,000. And a true and accurate return of the amount of gross receipts as aforesaid shall be made and rendered monthly by each of such associations, corporations, companies, or persons to the collector of the district in which any such association, corporation or company may be located, or in which such person has his place of business."

The parties agreed upon a special verdict, the material portions of which are set out in the opinion of the court below and need not be here repeated.

1. The first and most important question raised by the assignment of errors is whether the above section is unconstitutional.
43 This question, however, the learned judge of the circuit court declined to discuss, because "the present suit is a test case, destined for the Supreme Court of the United States;" and for the same reason, we, also, refrain from discussing it, and deem it expedient to merely state our affirmance of the constitutionality of the section, upon the ground that the presumption in favor of its validity has not been clearly confuted.

2. The use which the plaintiff really made of its wharves was in "carrying on or doing the business of * * * refining sugar." They were part of the plant of that business, and, as it was actually conducted, they were an essential condition of it. Consequently their receipts were its receipts, and as such they were properly comprised in the assessment. Adams Express Co. *v.* Ohio State Auditor, 165 U. S., 194.

3. The interest received by the plaintiff upon its corporate funds, either deposited in bank or invested in income producing securities, was also rightly included. The special verdict states that it was "interest upon its investments of moneys and property as explained by the testimony of Mr. Ball," and it appears from that testimony that the only business of the plaintiff was sugar refining, and that this interest was received by it upon investments or deposits of such part of the capital of that business as at the time being was not in active use therein. Mr. Ball, it is true, also testified that it did not have anything to do with sugar refining, but the question for our decision is, not whether this interest was derived from the refining of sugar, which of course it was not, but whether or not it was received in the *business* of sugar refining, and upon this very different question the facts found are conclusive. The funds of the corporation, however any portion of them may have been temporarily applied or held, were all embarked in the sugar refining business, and to it, therefore, all receipts which those funds produced necessarily belonged. Any diminution of them would certainly have been its loss, and it seems to be equally clear that their augmentation,
44 however occasioned, must have been its gain. Except in connection with and as incidental to that business, the plaintiff was neither an investor nor a depositor, and therefore, by becoming either the one or the other, it did not engage in an additional and separate business.

4. The learned judge in deciding that the collector had been justified in demanding monthly payments, said: "The tax is no doubt an annual tax in the sense that it is paid each year, and if provision for its assessment and collection had been made by the act, such provision would have been obligatory, both upon the Government and upon the refiner." But he was of opinion that the act contained no such provisions, and that therefore the regulation of the Commissioner of Internal Revenue directing its monthly assessment and collection was authorized by section 3447 of the Revised Statutes. We are unable to concur in the construction which was thus

given to section 27 of the act of June 13, 1898. It is of course a possible one, but its correctness is, at least, so questionable as to render it inadmissible to impose a duty upon a citizen. Hartranft *v.* Weigmann, 121 U. S., 609; U. S. *v.* Isham, 17 Wall., 496. But aside from this consideration, the meaning attributed by the court below to the phrase "shall be subject to pay annually," is not, we think, its natural meaning. The requirement, as directly and plainly expressed, is for payment annually and upon annual receipts; and this being so, there is, in our opinion, no warrant for inferring from the quite distinct provision for monthly returns, that it was intended that monthly payments might also be demanded, and upon monthly receipts. The tax, moreover, is only on gross annual receipts in excess of $250,000, and it cannot be supposed to have been contemplated that any person or company whose first return, as in the present instance, exhibited gross receipts exceeding that
45 amount, would be subject to a different rule respecting the time of payment from that which would apply to others, whose gross annual receipts might be shown to be greater than $250,000, only by a later return. We have already pointed out that it is not necessary to put an interpretation upon this section which might involve such inequality in its administration, and except by necessity, no such interpretation could be justified.

Solely upon the ground that the circuit court erred in holding that the plaintiff was required to pay the tax in question otherwise than annually, its judgment is reversed, and the cause is remanded to that court for further proceedings to be there taken in conformity with this opinion.

Filed January 13, 1902.

46 SPRECKELS SUGAR REFINING COMPANY, Plaintiff in Error,
v.
PENROSE A. MCCLAIN, Collector of Internal Revenue for the First District of Pennsylvania, Defendant in Error.

GRAY, *J.*:

Agreeing with the opinion of the court, as written in paragraphs 1, 2 and 4, I am compelled to dissent from that expressed in paragraph 3, to the effect that the interest received by the plaintiff in error, upon its deposits in bank, and as dividends from investments in shares and other securities, should be included in the amount of gross receipts in its business of sugar refining, returned for assessment and taxation.

Keeping in mind the well settled rule, that the citizen is exempt from taxation, unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid, I cannot assent to the affirmance of the judgment of the court below in this respect. I do not think that the income derived from such investment of funds, are in any proper sense receipts in the business of sugar refining. The very term "*gorss*

receipts" in "the business," would seem to exclude all such receipts as the interest upon investments here referred to.

Filed, January 13. 1902.

47 In the United States Circuit Court of Appeals for the Third Circuit, September Term, 1901.

SPRECKELS SUGAR REFINING COMPANY, Plaintiff in Error,
vs.
PENROSE A. MCCLAIN, Collector of Internal Revenue for the First District of Pennsylvania, Defendant in Error. } No. 17.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, and was argued by counsel.

On consideration whereof; it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause, be, and the same is hereby reversed.

And it is further ordered that this cause be remanded to the said circuit court for further proceedings in conformity with the opinion of this court.

Philadelphia January 14. 1902.

GEO. M. DALLAS,
Circuit Judge.

48 In the United States Circuit Court of Appeals for the Third Circuit, September Term, 1901.

SPRECKELS SUGAR REFINING COMPANY, Plaintiff in Error,
vs.
PENROSE A. MCCLAIN, Collector of Internal Revenue for the First District of Pennsylvania, Defendant in Error. } No. 17.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

And now to wit: this 14 day of February A. D. 1902, it is ordered that mandate issue to the said circuit court of the United States for the eastern district of Pennsylvania in accordance with the opinion and judgment of this court in said cause.

GEO. M. DALLAS,
Circuit Judge.

49 UNITED STATES OF AMERICA, *ss:*

[Seal United States Circuit Court of Appeals, Third Circuit.]

The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, Greeting:

Whereas, lately in the circuit court of the United States for the eastern district of Pennsylvania, before you, or some of you, in a cause between Spreckels Sugar Refining Company, plaintiff in error, against Penrose A. McClain, collector of internal revenue for the first district of Pennsylvania, defendant in error, wherein the judgment of the said circuit court entered in said cause is in the following words, viz:—

"In accordance with the opinion of said court, the plaintiff is entitled to judgment as follows:

1. For tax paid upon $204,912.51, and $517.92 of receipts on account of business done before the passage of the act, and

2. For tax paid upon $143,146.45 and $25,874.31 of receipts for stevedoring; with the proper interest upon both sums.

The total amount which the plaintiff is entitled to recover is therefore $1,056.82, for which judgment will be entered and there-

upon judgment was entered accordingly,

50 as by the inspection of the transcript of the record of the said circuit court, which was brought into the United States circuit court of appeals for the third circuit by virtue of a writ of error, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

51 And whereas, in the present term of September, in the year of our Lord one thousand nine hundred and one, the said cause came on to be heard before the said United States circuit court of appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be and the same is hereby reversed.

And it is further ordered that this cause be remanded to the said circuit court for further proceedings in conformity with the opinion of this court.

Philadelphia, January 14, 1902.

52 You, therefore, are hereby commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 14th day of February, in the year of our Lord one thousand nine hundred and two.

WM. H. MERRICK,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

[Endorsed:] U. S. circuit court of appeals, third circuit. No. 17. Sept. term, 1901. Spreckels Sugar Refining Co., plaintiff in error, *vs.* Penrose A. McClain, collector, etc. Mandate.

53 In the Supreme Court of the United States.

SPRECKELS SUGAR REFINING COMPANY, Plaintiff in Error,
vs.
PENROSE A. MCCLAIN, Defendant in Error. } No. 17.

In error to the circuit court of appeals of the United States for the third circuit, September term, 1901.

Petition for Writ of Error to the Supreme Court of the United States.

Spreckels Sugar Refining Company, plaintiff in error in the above entitled cause, being aggrieved by the final judgment made and entered by the court in the above entitled cause, on the 14th day of January, 1902, whereby it is adjudged that the plaintiff in error shall recover (in addition to the sum of one thousand and fifty-six and eighty-two hundredths dollars, with interest from April 17th, 1901, adjudged to it by the judgment of the circuit court of the United States made and entered on the 18th day of May, A. D. 1901,) only such damages as it suffered by reason of the fact that it was required to pay the tax upon its gross receipts otherwise than annually, which damages, as appears by the special verdict rendered in said cause, were only the sums of $3,321.23 and $36.75, making a total of $3,357.98; and whereby it is further adjudged that the twenty-seventh section of the act of Congress, approved June 13th, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," is constitutional, comes now by its attorney John G. Johnson and petitions the court for an order allowing the said plaintiff in error to prosecute a writ of error
54 from the said judgment to the Supreme Court of the United States in accordance with the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which plaintiff in error shall furnish upon such writ of error, and that upon giving such security all further proceedings in this court shall be stayed until the determination of said writ of error by said Supreme Court of the United States.

And your petitioner will ever pray.

JOHN G. JOHNSON,
Attorney for Petitioner,
Per J. W. BAYARD.

June 28th, 1902.

(Endorsed:) No. —, —— sessions —. In the Supreme Court of the United States. Spreckels Sugar Refining Company, plaintiff in error, *vs.* Penrose A. McClain, defendant in error. Petition for writ of error to the circuit court of appeals for the third circuit. John G. Johnson, 1001 Chestnut St. Philadelphia. Filed July 5, 1902.

55 In the Supreme Court of the United States.

SPRECKELS SUGAR REFINING COMPANY, Plaintiff in Error,
vs.
PENROSE A. McCLAIN, Defendant in Error. } No. 17.

In error to the circuit court of appeals *for* the United States for the third circuit, September term, 1901.

Specifications of Error.

I. The learned circuit court of appeals erred in dismissing the first specification of error of plaintiff in error to the judgment of the circuit court of the United States for the eastern district of Pennsylvania. Said specification of error was as follows:—

"1. The learned judge erred in deciding that section 27 of the act of Congress, approved June 13, 1898, entitled 'An act to provide ways and means to meet war expenditures and for other purposes,' is valid and constitutional."

II. The learned circuit court of appeals erred in dismissing the second specification of error of plaintiff in error to the judgment of the circuit court of the United States for the eastern district of Pennsylvania. Said specification of error was as follows:—

"2. The learned judge erred in deciding that the plaintiff was liable to taxation under the provisions of the said section of said act."

III. The learned circuit court of appeals erred in dismissing the fifth specification of error of plaintiff in error to the judgment of the circuit court of the United States for the eastern district of Pennsylvania. Said specification of error was as follows:—

56 "5. The learned judge erred in deciding that the plaintiff was liable under said section of said act to taxation upon interest received by plaintiff upon its investments."

IV. The learned circuit court of appeals erred in dismissing the sixth specification of error of plaintiff in error to the judgment of the circuit court of the United States for the eastern district of Pennsylvania. Said specification of error was as follows:—

"6. The learned judge erred in deciding that the plaintiff was liable to taxation under the provisions of said section of said act upon its receipts from rent and wharfage."

"V. The learned circuit court of appeals erred in dismissing the seventh specification of error of plaintiff in error to the judgment of the circuit court of the United States for the eastern district of Pennsylvania. Said specification of error was as follows:—

"7. The learned judge erred in not deciding that the plaintiff was in no event liable under the provisions of said section of said act to taxation upon its receipts from any other source than the sales made since the 13th day of June, 1898, of sugar by it manufactured."

JOHN G. JOHNSON,
Attorney for Plaintiff in Error,
Per J. W. BAYARD.

June 28th, 1902.

(Endorsed:) No. —, —— session —. In the Supreme Court of the United States. Spreckels Sugar Refining Co., plaintiff in error. *vs.* Penrose A. McClain, defendant in error. Specification of error. John G. Johnson. Filed July 5. 1902.

57 Know all men by these presents, that we Spreckels Sugar Refining Company, as principal, and Robert Walker and W. Edgar Buchanan, as sureties are held and firmly bound unto Penrose A. McClain in the full and just sum of one thousand ($1000.) dollars, to be paid to the said Penrose A. McClain certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this second day of July in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a session of the circuit court of appeals of the United States for the third circuit in a suit depending in said court, between Spreckels Sugar Refining Company, plaintiff in error and Penrose A. McClain defendant in error a judgment was rendered against the said Penrose A. McClain and in favor of the said Spreckels Sugar Refining Company in a much less sum than was claimed by said company and the said Spreckels Sugar Refining Company plaintiff in error having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Penrose A. McClain, defendant in error citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Spreckels Sugar Refining Company plaintiff in error shall prosecute its writ of error to effect, and answer all damages and costs if
58 it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

SPRECKELS SUGAR REFINING COMPANY,
By W. W. FRAZIER, JR., *Sec'y.*
[CORPORATE SEAL.]

ROBERT WALKER. [SEAL.]
W. EDGAR BUCHANAN. [SEAL.]

Sealed and delivered in presence of—
JOHN B. WHIDDEN.
CHAS. L. PACKER.

Approved by
JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

The above bond is satisfactory to defendant in error.
JAMES B. HOLLAND,
U. S. Attorney.

T.

7/2/1902.
6—103.

59 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of appeals of the United States for the third circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of appeals before you, or some of you, between Spreckels Sugar Refining Company, plaintiff in error and Penrose A. McClain defendant in error a manifest error hath happened, to the great damage of the said Spreckels Sugar Refining Company plaintiff in error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the third day of July, in the year of our Lord one thousand nine hundred and two (1902).

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

60 UNITED STATES OF AMERICA, *ss:*

To Penrose A. McClain, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the circuit court of appeals of the United States for the third circuit wherein Spreckels Sugar Refining Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph McKenna, associate justice of the Supreme Court of the United States, this 3rd day of July, in the year of our Lord one thousand nine hundred and two.

JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

61 July 7th, 1902.—Service accepted

JAMES B. HOLLAND,
United States Attorney.

T.

62 UNITED STATES OF AMERICA, *sct:*

I, William H. Merrick, clerk of the United States circuit court of appeals, for the third circuit, do hereby certify the foregoing pages from one to sixty-one inclusive to contain a full, true, complete and faithful copy of the original transcript of record in the case of Spreckels Sugar Refining Company, plaintiff in error against Penrose A. McClain, collector of internal revenue for the first district of Pennsylvania, defendant in error, on file, and now remaining among the records of the said court in my office.

Seal United States Circuit Court of Appeals, Third Circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-ninth day of July in the year of our Lord one thousand nine hundred and two and of the Independence of the United States the one hundred and twenty-seventh.

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

Endorsed on cover: File No. 18,631. U. S. C. C. of appeals, 3rd circuit. Term No. 103. Spreckels Sugar Refining Company, plaintiff in error, *vs.* Penrose A. McClain, collector of internal revenue for the first district of Pennsylvania. Filed July 30, 1902.